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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 892

HAZELTINE CORPORATION,
Petitioner,

vs.

THE CROSLEY CORPORATION,
Respondent.

REPLY BRIEF FOR PETITIONER

WILLIAM H. DAVIS
R. MORTON ADAMS
Counsel for Petitioner

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Respondent's brief does not touch upon the main point of the petition, namely, that the inflexibility of the rule sought to be reviewed threatens to disrupt the patent system, is not necessary in order to preserve the benefits of the Declaratory Judgment Act, runs counter to the long established rule as to the granting of injunctions, and being a matter of general importance, should not become the law without full consideration by this Court.

Respondent does not comment on the numerous cases which are cited in the petition to show the existence of confusion on the matter.

Respondent discusses the detailed facts of the case. But these facts were not the basis of the Court's decision.

The present petition, indeed, is based on the refusal of the Court to ground its decision on the facts. Respondent's discussion of the facts is only a partial discussion with unwarranted emphasis and inference. Petitioner is not guilty of any bad faith, but it thinks that respondent is when it goes out of its own district and circuit to bring an action which it could more easily have filed as a counter-claim in litigation already pending in its own district; particularly when respondent waited over a year to file the action and thereby lead petitioner to believe that respondent did not want to litigate the matter.

Any rule as to whether an injunction should issue should make provision for considering facts such as these, not merely the fact as to which action was filed first, which is the rule laid down by the Court below in the instant case and reiterated by it in the case of *Triangle Conduit and Cable Co., Inc.*, v. *National Electric Products Corporation*, 51 U. S. P. Q. 425 (opinion printed in full in appendix to petition). Since we filed our petition the Court in the Triangle case sitting *en banc* rendered another opinion on February 10, 1942, the first opinion having been withdrawn. A copy is appended hereto.

CONCLUSION

It is submitted that the petition presents a matter of importance as to which there is confusion in the decided cases. The petition should therefore be granted.

Respectfully submitted,

WILLIAM H. DAVIS,
R. MORTON ADAMS,
Counsel for Petitioner.